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THOMAS VINCENT GIRARDI

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS VINCENT GIRARDI,

Defendant.

Case No. 2:23-cr-00047-JLS-1

**UNOPPOSED *EX PARTE*
APPLICATION FOR ORDER TO
FILE OVERSIZED MOTION FOR A
FINDING OF INCOMPETENCY
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION
OF COUNSEL**

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1 Thomas Vincent Girardi, through his counsel of record, Deputy Federal Public
2 Defenders Craig A. Harbaugh, Georgina Wakefield, and J. Alejandro Barrientos, files
3 this *ex parte* application for an order permitting the filing of the oversized and
4 contemporaneously filed memorandum of points and authorities in support of his
5 Motion for a Finding of Incompetency. This application is based on the attached
6 declaration of counsel. The government does not oppose this application.

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8 Respectfully submitted,

9 CUAUHTEMOC ORTEGA
10 Federal Public Defender

11 DATED: July 5, 2023

By /s/ Craig A. Harbaugh

12 CRAIG A. HARBAUGH
13 GEORGINA WAKEFIELD
14 J. ALEJANDRO BARRIENTOS
15 Deputy Federal Public Defenders
16 Attorneys for THOMAS VINCENT GIRARDI
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DECLARATION OF CRAIG A. HARBAUGH

I, Craig A. Harbaugh, declare:

1. I am an attorney with the Office of the Federal Public Defender for the Central District of California. I am licensed to practice law in the State of California and I am admitted to practice in this Court. I represent Mr. Thomas Vincent Girardi in the above-captioned case.

2. On March 22, 2023, this Court entered an order for a competency evaluation of Mr. Girardi. (Dkt. 54) Defendant's motion regarding competency shall be filed by July 5, 2023, the government's opposition, if any, shall be filed by August 2, 2023, and any reply shall be filed by August 9, 2023. The date of the competency hearing shall remain scheduled for August 23, 2023, or as soon thereafter as the Court is available. (Dkt. 75).

3. The Court ordered that each party's psychiatric or psychological expert submit a written report addressing: "(1) defendant's history and present symptoms; (2) description of the psychiatric, psychological, and medical tests that were employed and their results; (3) the experts' respective findings; and (4) the experts' respective opinions as to diagnosis, prognosis, and (5) whether defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." (Dkt. 54)

4. The Court's imposes a 25-page limit on memoranda of points and authorities except where good cause is shown.

5. For the following reasons, there is good cause to permit Mr. Girardi to submit an oversized memorandum in support of his motion for a finding of incompetency:

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- a. The Supreme Court has “repeatedly and consistently recognized that ‘the criminal trial of an incompetent defendant violates due process.’” *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996), *quoting Medina v. California*, 505 U.S. 437, 453 (1992).
- b. Moreover, “the consequences of an erroneous determination of competence are dire. Because [an incompetent defendant] lacks the ability to communicate effectively with counsel, he may be unable to exercise other ‘rights deemed essential to a fair trial.’” *Id.* at 364 (quoting *Riggins*, 504 U.S. at 139 (Kennedy, J., concurring)).
- c. In this matter, four experts have submitted reports or notices regarding Mr. Girardi’s competency, including a neurologist, two neuropsychologists, and an independent legal expert. (Dkt. 60, 64).
- d. All together, the expert submissions total to nearly 300 pages.
- e. The expert submissions are based on thousand of pages of medical records, legal records, discovery, and other material, dating as far back as 2017 or earlier.
- f. Beyond including voluminous factual information, the expert submissions include discussion of complex topics, such as diagnosing dementia and other conditions, and various different neurocognitive and psychological tests.
- g. Given the extensive and numerous expert reports, the volume of underlying information, and complexity of the relevant issues, the defense requires more than 25 pages to adequately present its argument regarding Mr. Girardi’s competency.

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